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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,002	10/20/2003	Eric F. Bernstein	BERN-0070	4112
7590		02/23/2005	EXAMINER	
Licata & Tyrrell P.C.		LAMM, MARINA		
66 East Main Street		ART UNIT		
Marlton, NJ 08053		PAPER NUMBER		

1616

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,002

Applicant(s)

BERNSTEIN, ERIC F.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/3/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-13 are pending in this application filed 10/20/03.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bernstein et al. ("Citric Acid Increases Viable Epidermal Thickness and Glycosaminoglycan Content of Sun-damaged Skin," Dermatol. Surg., 1997; 23, 689-694), supplied by the Applicant.

Bernstein et al. teach treating photodamaged skin by topically applying to the skin 20% citric acid lotion. See p. 689.

Thus, Bernstein et al. teach each and every limitation of Claim 1.

3. Claims 1, 4, 7, 8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ancira (US 5,874,463).

Ancira teaches treating skin hyperpigmentation and other skin conditions by applying to the skin a topical skin exfoliation composition comprising citric acid. See col. 3, lines 29-46; col. 4, lines 23-25. In one embodiment, the compositions of Ancira contain 18-24 % of citric acid; in another embodiment 12-18% of citric acid. See col. 4, lines 26-32; Examples 2, 3, 5. With respect to Claims 4 and 11, Ancira teaches applying second coat of the composition. See col. 4, lines 45-46.

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Thus, Ancira teaches each and every limitation of Claims 1, 4, 7, 8 and 11.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann (US 2002/0155083) in view of Ancira (US 5,874,463).

Mann teaches dermal regeneration methods comprising five steps: (1) an abrasive scrub, preferably microdermabrasion or epidemabrasion; (2) a keratolytic solvent; (3) a chemical peel compositions containing citric acid; (4) laser treatment; and (r) a thymic peptide based cream. See Abstract; [0005]-[0007]; [0010]-[0021]. Mann does not explicitly teach a concentration of citric acid in acid peel compositions. However, Ancira teach chemical peel compositions containing 18-24% or 12-18% of citric acid as discussed above. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use citric acid in concentrations of 18-24% or 12-18% in the acid peel compositions of Mann. One having ordinary skill in the art would have been motivated to do this to obtain effective skin peel compositions as suggested by Ancira.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,009,876; US 6,030,948; US 6,641,591; US 6,652,888.

7. No claim is allowed at this time.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ml
2/20/05




MICHAEL HARTLEY
PRIMARY EXAMINER